

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
William E. Spindler) Group: 1792
Serial No.: 10/607,227) Confirmation No. 5896
Filed: June 26, 2003)
Title: CLEANING COMPOUND FOR) Examiner: Bibi Sharidan Carrillo
CLEANING SURFACES IN A)
FOOD PROCESSING)
ENVIRONMENT)
Atty. Docket No.: NSC0001)
Customer No.: 0832)

APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief-Patents
Assistant Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant submits the following Reply Brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer ("Answer"), mailed on April 21, 2008 responsive to Appellant's Appeal Brief ("Brief"), filed on February 12, 2008.

ARGUMENT

Responsive to the Examiner's statements in the "Response to Argument" section of pages 9-14 of the Answer, Appellant submits the following reply.

Appellant's arguments regarding the use of the language "consisting essentially of" with respect to the scope of the present claims in view of the references applied by the Examiner and the case law are set forth in detail in the Brief and thus are not repeated here.

In the Answer, the Examiner has referred to specific portions of two of the disclosures of the applied references, namely U.S. Patent No. 5,739,327 to Arbogast et al. ("Arbogast et al. '327") and U.S. Patent No. 5,743,514 to Rees ("Rees '514").

As set forth below, while these references disclose certain chemical compositions, they do not disclose the presently claimed methods.

With respect to Arbogast et al. '327, Appellant respectfully disagrees with the Examiner's interpretation of Tables 6 and 7 of Examples 4 and 5 thereof, respectively, and notes the Examiner's statement that "appellant's *claimed composition* of a hydrogen peroxide and alkaline component is no different from the control compositions..." (Answer, p. 10, ¶ 3) (*italics added*).

In Example 4, "[p]eroxide (H_2O_2) was supplied in the form of sodium perborate monohydrate, where 0.156 g/L corresponds to 25 ppm active oxygen (AO) in the Terg-o-tometer" (col. 17, lines 31-33), and Table 6 indicates that as a "Control Composition[]", "Peroxide and Detergent (25 ppm A.O.)" was used.

In Example 5, "[p]eroxide (H_2O_2) was supplied in the form of hydrogen peroxide by adding 0.11 ml of 30% stock to 1.5 L wash volumes to give the equivalent of 25 ppm active oxygen (AO) in the Terg-o-tometer" (col. 18, lines 19-23), and Table 7 indicates that as a "Control Composition[]", "Detergent and 25 ppm A.O." was used.

Appellant respectfully submits that one of ordinary skill in the art would know from these Examples that solution mixtures of peroxide and detergent are formed, which were subsequently tested in test washes in a "Terg-o-tometer" test wash device.

Thus, the foregoing Examples of Arbogast et al. '327 do not disclose the claimed method of independent Claim 37 of cleaning and disinfecting a surface or an item of equipment, comprising the steps of providing a cleaning kit comprising a first container consisting essentially of a peroxide and a second container consisting essentially of an alkaline component, and *applying the peroxide and the alkaline components of the first and second containers* to at least one of the surface and the item of the equipment.

The foregoing Examples of Arbogast et al. '327 are also not methods of cleaning and disinfecting a surface or an item of equipment, comprising the steps of providing a cleaning composition in dry form, the cleaning composition consisting essentially of a peroxide and an alkaline component (Claim 57) or consisting essentially of a peroxide (Claim 71), and *applying the cleaning composition in dry form* to at least one of the surface and the item of equipment, as called for independent Claims 57 and 71.

The Examiner's further citations to col. 7, lines 63-65; col. 8, lines 55-60; and Example 7, lines 40-45 of Arbogast et al. '327 (Answer, p. 11, ¶ 4) also fail to evidence a disclosure by Arbogast et al. '327 of the claimed methods.

Specifically, at col. 7, line 63 through col. 8, line 6, Arbogast et al. '327 teaches that the bleach

activators can be incorporated into a liquid or solid matrix for use in liquid or solid detergent bleaches by dissolving into an appropriate solvent or surfactant or by dispersing onto a substrate material, such as an inert salt (e.g., NaCl, Na₂SO₄) or other solid substrate, such as zeolites, sodium borate, or molecular sieves. Thus, activators of the invention can be dispersed onto a solid or granulated carrier such as silica, clay, zeolite, polymer, hydrogel, starch, or ion exchange material. Alternatively, solid activator can be encapsulated such as into waxes or polymers.

This is merely a statement that the bleach activators disclosed in Arbogast et al. '327 may be incorporated into liquid or solid carriers, and is not a disclosure of the methods called for in the present claims.

The "dry bleaching and cleaning composition" set forth at col. 8, lines 54-65 of Arbogast et al. '327 also includes a bleach activator and further, is not a disclosure of the methods called for in the present claims. This is also true of Example 7 at col. 19, line 40 through col. 20, line 12, where a composition including a bleach activator is formulated and tested for storage stability.

With respect to Rees '514, Appellant respectfully disagrees with the Examiner's interpretation of Comparative Examples 1 and 2 thereof, and notes the Examiner's statement that "appellant's *claimed composition* of a hydrogen peroxide and alkaline component is no different from the compositions recited in the comparative Examples 1 and 2 of Rees." (Answer, p. 12, ¶ 3) (*italics added*).

The Examiner properly recognizes that under the headings "Comparative Example 1" and "Comparative Example 2" at col. 7, line 65 through col. 8, line 2, and at col. 8, lines 35-40 of Rees '514, respectively, aqueous solution *compositions* including an alkaline component and hydrogen peroxide are disclosed. These are mixtures of alkaline components and peroxides, *i.e.*, are *single phase* aqueous solutions that are used for testing in the Examples.

This is not a disclosure of the claimed method of independent Claim 37 of cleaning and disinfecting a surface or an item of equipment, comprising the steps of providing a cleaning kit comprising a first container consisting essentially of a peroxide and a second container consisting essentially of an alkaline component, and applying the peroxide and the

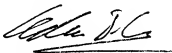
alkaline components of the first and second containers to at least one of the surface in the item of equipment.

This is also not a disclosure of methods of cleaning and disinfecting a surface or an item of equipment, comprising the steps of providing a cleaning composition in dry form, the cleaning composition consisting essentially of a peroxide and an alkaline component (Claim 57) or consisting essentially of a peroxide (Claim 71), and applying the cleaning composition in dry form to at least one of the surface and the item of equipment, as called for independent Claims 57 and 71.

In the event Appellant has overlooked the need for an extension of time or payment of fee, Appellant hereby petitions therefor and authorizes that any charges be made to Deposit Account No. 02-0385, BAKER & DANIELS LLP.

If any question concerning this application should arise, the Examiner is invited to telephone the undersigned at 219/424-8000.

Respectfully submitted,



Adam F. Cox
Registration No. 46,644

Attorney for Applicant

AFC/mh

BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

Date: June 12, 2008